

From: [Elizabeth Goldmann](#)
To: [Goldmann, Elizabeth](#)
Subject: Fw: Santa Cruz river
Date: Tuesday, October 25, 2016 10:44:17 AM

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Elizabeth Goldmann/R9/USEPA/US@EPA Nova Blazej/R9/USEPA/US@EPA			
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▼ Karen Vitulano/R9/USEPA/US

Karen Vitulano/R9/USEPA/US

07/14/2008 12:12 PM

To

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Goldmann/R9/USEPA/US@EPA

cc

Nova Blazej/R9/USEPA/US@EPA

Subject

Santa Cruz river

This seems to be related to the Border fence - we commented generally on concerns regarding the Santa Cruz river in our EA letter, and these two legislators are the ones active in the border fence issue.

~~*~*~*~*~*~*~*~*~*~*~*~*~*~*~*~*~*

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Giffords, Grijalva ask Army for explanation over river's label
By Dick Kamp, Wick News Service/Sierra Vista Herald

U.S. Reps. Gabrielle Giffords and Raul Grijalva have sent separate letters to Assistant Secretary of the Army, John Paul Woodley Jr., requesting an immediate response as to why the Army Corps of Engineers chose to alter its designation of two sections of the Santa Cruz River as "navigable."

The Corps of Engineers change in designation threw into question protection of those sections under the Clean Water Act.

The Santa Cruz River navigable determination is important because of a Supreme Court decision known as "Rapanos."

In 2006, the court split three ways in the Rapanos case as to what constitutes a body of water and streambed that would be protected under the Clean Water Act Amendments of 1972. An opinion by Justice Kennedy that a streambed needs to have a "significant nexus" to a navigable body of water has created enforcement and rule-making chaos among Environmental Protection Agency and state agencies. This has been especially impacting the arid Western United States.

There is further confusion as to whether the Rapanos decision influences all Clean Water Act pollution discharges, or is limited to Army Corps of Engineers permits to control the obstruction of waterways, the subject of the decision.

An EPA internal memo released last Monday by U.S. Reps. Henry Waxman, D-Calif., and James Oberstar, D-Minn., indicated that at least half of EPA 2007 enforcement of Clean Water Act cases has been halted or slowed by Rapanos, particularly pollution discharge cases. The EPA memo suggested that 95 percent of Arizona streambeds — those not permanently flowing with water — could be unenforceable under the Clean Water Act.

Therefore, because of Rapanos, decisions by the Army Corps to declare a waterway such as the Santa Cruz navigable are important to implementing the Clean Water Act, unless and until Congress is able to pass proposed legislation to clarify the lawmakers intent of the act to protect all streambeds.

In interviews a week ago, the Corps was unable to explain succinctly why all evidence of the study that declared the Santa Cruz as worthy of protection was removed from their Web site, and why the study was subject to a policy review. Equally confusing, the Los Angeles District, in interviews with Wick Communications Co., said the navigable designation was still in force in spite of the review.

Giffords, who also represents Cochise County, and Grijalva demanded clarification of the Corps action and its implications on their ability to regulate under the act. These included clarifying whether the Santa Cruz River is still navigable, what the review is about and how long it will take to resolve the process.

"As I am sure you know, if this suspension were to become permanent, it would leave the entire Tucson watershed without protection under the Clean Water Act. This possibility is of great concern to me and my constituents," Giffords wrote in her letter.

Grijalva also asked for records that could shed light on political motivations for such a decision. In his letter he asked for detailed responses to several questions.

"What groups or governmental entities have contacted your agency in opposition to navigability of the Santa Cruz, either before and after the initial determination?" Grijalva asked in his letter. "Has the Corps received correspondence from or met with city, county, or state governmental officials opposing or concerned about the navigability determination? Has the Corps received correspondence from or conducted meetings with private entities or their consultants opposed to or concerned about the navigability determination?"

He added that, "It is important that such decisions by federal officials be conducted in the most open and transparent manner possible."

A statement distributed by Giffords' office last week said she "wants to know what prompted the Corps to suspend that finding. She is asking Woodley to explain the purpose of the suspension decision, the process used to arrive at it, who initiated it and who ultimately made it."

The statement notes that "opponents of the proposed Rosemont Mine believe the determination (of sections of the Santa Cruz River as "navigable") may pose an obstacle to opening the controversial copper mine."

Giffords and Grijalva are opponents of the proposed mine.

DICK KAMP is Wick Communications Co.'s environmental liasion. He can be reached by e-mail at bepdick@att.net.
